

Barry W. Davidson
Bruce K. Medeiros
Robert S. Delaney
DAVIDSON ♦ MEDEIROS
1280 Bank of America Center
601 West Riverside Avenue
Spokane, Washington 99201
(509) 624-4600

Counsel for Metropolitan Mortgage &
Securities Co., Inc. and the
Metropolitan Creditors' Trust

Douglas B. Marks
Ford Elsaesser
Bruce A. Anderson
ELSAESSER, JARZABEK, ANDERSON,
MARKS, ELLIOTT & McHUGH, CHTD.
Lake Plaza Building
P.O. Box 1049
Sandpoint, Idaho 83864
(208) 263-8517

Counsel for Summit Securities, Inc.
and the Summit Creditors' Trust

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re. . .

**METROPOLITAN MORTGAGE &
SECURITIES CO., INC.,**

Debtor.

In re. . .

SUMMIT SECURITIES, INC.,

Debtor.

Jointly Administered Under:
No. **04-00757-W11**
Chapter **11**

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW RE: TWENTY-
FIRST SUPPLEMENTAL ORDER
AUTHORIZING TRANSFER OF
CERTAIN RECEIVABLES
(SSC SETTLEMENTS LLC)**

THIS MATTER having come on regularly for hearing upon the Motion filed February 2, 2007 [Docket No. 12822] (the "Twenty-First Motion"), of Metropolitan Mortgage & Securities Co., Inc. and the Metropolitan Creditors' Trust (collectively referred to herein as "Metropolitan") and Summit Securities, Inc. and the Summit Creditors' Trust (collectively referred to herein as "Summit"), by and through their counsel, for a Twenty-First Supplemental Order Authorizing Transfer Of Certain Receivables (the "Twenty-First Supplemental Order"), pursuant to the Order

1 Authorizing Sale Of Structured Settlements, Approving Receivables Purchase
2 Agreement, And Granting Related Relief entered herein on May 23, 2005 [*Docket*
3 *No. 3028*] (the “Portfolio Sale Order”), authorizing and approving the sale by
4 Metropolitan and Summit (the “Debtors” or the “Sellers”) of certain portfolios of
5 receivables and related assets entitling the Sellers to certain payments as set
6 forth herein to SSC Settlements, LLC (the “Purchaser”), and in connection
7 therewith, the issuance of Supplemental Court Orders¹ (as defined in the Portfolio
8 Sale Order); and the Court making the findings of fact and conclusions of law set
9 forth hereafter pursuant to Bankruptcy Rule 7052, made applicable to this
10 proceeding pursuant to Bankruptcy Rule 9014, with such findings of fact to be
11 construed as conclusions of law when appropriate, and with such conclusions of
12 law to be construed as findings of fact when appropriate, and all capitalized terms
13 not otherwise defined herein having the meanings given such terms in the
14 Twenty-First Motion, the Portfolio Sale Order, or the Purchase Agreement, as the
15 case may be;
16
17
18

19 NOW THEREFORE, the Court makes the following Findings of Fact:
20

21 1. On February 4, 2004 (the “Petition Date”), the Debtors filed their
22
23

24 ¹ Capitalized terms not otherwise defined herein shall have the same meaning set forth in the
25 Receivables Purchase Agreement dated as of March 12, 2005 (the “Purchase Agreement”). Certain
of the terms of the Purchase Agreement are summarized herein. Reference is made to the
Purchase Agreement for a complete recitation of the terms of the proposed transaction. In the
event of conflict between the terms as summarized herein and the actual terms of the Purchase
Agreement, the Purchase Agreement will control.

1 respective petitions for relief pursuant to chapter 11 of the Bankruptcy Code in
2 the judicial district within which their principal places of business have been
3 located for the one hundred and eighty days immediately preceding the filing of
4 such petitions.
5

6 2. The Twenty-First Motion concerns the sale of property other than
7 property resulting from claims brought by the estate against persons who have
8 not filed claims against the estate, within the meaning of 28 U.S.C. § 157
9 (b)(2)(B)(n).
10

11 3. The Debtors transmitted notice of the Twenty-First Motion and all
12 transactions contemplated thereby, to all persons and entities set forth by the
13 Standing Order, and as required by the Purchase Agreement, including the Payee,
14 the Annuity Issuer, and the Annuity Owner.
15

16 4. A reasonable opportunity to object and be heard with respect to the
17 Twenty-First Motion and the relief requested therein has been afforded to all
18 persons and entities set forth by the Standing Order, and as required by the
19 Purchase Agreement, including the Payee, the Annuity Issuer, and the Annuity
20 Owner.
21

22 5. Certain states have enacted legislation (the "State Transfer Acts") that
23 may, depending on the date of assignment, govern the transfer of the receivables
24 and related assets that are subject to the Supplemental Court Orders. The
25 Debtors and the Purchaser assert that the transfer of the contract from the

1 Debtors to the Purchaser as set forth in the Twenty-First Supplemental Order has
2 either been approved by an applicable State Transfer Act, or is not subject to a
3 State Transfer Act because the contract was entered into prior to the effective
4 date of the applicable State Transfer Act, as set forth in the Declaration Of
5 Patricia La Borde Regarding Applicability Of State Transfer Acts To Future
6 Supplemental Court Orders, filed herein on January 11, 2006 [*Docket No. 9911*].

7
8 6. The Debtors have entered into such a contract with Peter G. Maclay
9 (the "Payee"), with annuity contract number FP201649, in which Payee agreed to
10 assign, and the Debtors agreed to purchase, certain payments payable under a
11 structured settlement agreement.
12

13 7. The Debtors seek to assign the contract with the Payee to the
14 Purchaser. The Annuity Issuer and Annuity Owner shall remit the Assigned
15 Payments in accordance with the payment stream as follows: monthly payments
16 of Two Thousand Nine Hundred Twenty-one Dollars and 89/100 (\$2,921.89)
17 beginning with the payment due on November 15, 2009 through and including
18 the payment due on October 15, 2019, increasing three percent (3.00%) each
19 August (the "Assigned Payments") to Purchaser's assignee, WMS Susquehanna
20 Fund (the "Assignee"), or its successors and/or assigns, at the following address:
21 c/o Commonwealth Trust Company, 29 Hill Road, Wilmington, Delaware 19806,
22 or such other address as the Assignee, or its successors and/or assigns, may
23 designate.
24
25

1 8. The Assigned Payments shall be made to the Assignee even in the
2 event of death of the Payee. As of the date of entry of the Twenty-First
3 Supplemental Order, the Payee shall no longer have the power or authority to
4 request changes to the Payee's address or beneficiary designation relating to the
5 Assigned Payments. The Annuity Issuer and Annuity Owner shall remit the
6 Assigned Payments to the Assignee.
7

8 9. By making and delivering the Assigned Payments to the Assignee as
9 set forth herein, the Annuity Issuer and Annuity Owner shall have no liability to
10 the Payee for making the payments to the Assignee. The Purchaser shall be liable
11 to the Annuity Issuer and Annuity Owner for any liabilities, taxes, or costs of any
12 kind, including reasonable costs and attorneys' fees arising from compliance by
13 the Annuity Issuer and Annuity Owner with the Twenty-First Supplemental Order
14 and/or arising as a consequence of the Purchaser's failure to comply with
15 applicable law.
16
17

18 10. The Twenty-First Supplemental Order shall in no way modify or
19 negate the ownership or control of the underlying contract by the Annuity Owner
20 and shall be entered without prejudice to the rights of the Annuity Owner and
21 Annuity Issuer and the lack of opposition by the Annuity Issuer and Annuity
22 Owner to this transfer, and their compliance with the Twenty-First Supplemental
23 Order, and the Court's entry of the Twenty-First Supplemental Order, shall not
24 constitute a judicial determination or evidence in this or any other matter
25

1 regarding: (i) the assignability of payments under a structured settlement
2 agreement or annuity contract or related contracts or whether such payments
3 can be assigned; (ii) the enforceability of provisions that restrict and/or preclude
4 assignment of payments under a structured settlement agreement or annuity
5 contract or related contracts or orders; (iii) the validity of other transactions
6 entered into by Assignee; or (iv) whether the Annuity Issuer and the Annuity
7 Owner have waived any rights in connection with any other litigation or claims or
8 rights other than the rights to the Assigned Payments as described above.
9
10

11 11. The Twenty-First Supplemental Order shall be binding on any and all
12 successors of (a) the Payee, (b) other interested parties, (c) the Purchaser, and
13 (d) the Assignee.
14

15 12. The Court shall retain jurisdiction to interpret and enforce the
16 provisions of the Twenty-First Supplemental Order in all respects, including,
17 without limitation, retaining exclusive jurisdiction to determine or resolve any
18 and all objections to or disputes among the parties with respect to the matters set
19 forth herein, provided however that, in the event the Court abstains from
20 exercising, or declines to exercise, jurisdiction with respect to any matter referred
21 to in this paragraph or is without jurisdiction, such abstention, refusal, or lack of
22 jurisdiction shall have no effect upon and shall not control, prohibit, or limit the
23 exercise of jurisdiction of any other court having competent jurisdiction with
24 respect to any such matter.
25

1 13. Notwithstanding the provisions of Bankruptcy Rules 6004(g) and
2 6006(d), the Twenty-First Supplemental Order shall not be stayed for ten (10)
3 days after entry thereof, but shall be effective and enforceable immediately upon
4 issuance thereof. Time is of the essence in closing the transactions referenced
5 herein, as the Debtors and the Purchaser intend to close such transactions as
6 soon as practicable. Therefore, any party objecting to entry of the Twenty-First
7 Supplemental Order must exercise due diligence in filing an appeal and pursuing
8 a stay, or risk its appeal being foreclosed as moot.
9

10
11 14. The Twenty-First Supplemental Order should be entered in the form
12 attached to the Twenty-First Motion as Exhibit "C."

13 WHEREFORE, having entered the foregoing Findings of Fact, the Court
14 hereby makes the Conclusions of Law set forth hereafter. To the extent any of the
15 following Conclusions of Law constitute Findings of Fact, they are adopted as
16 such.
17

18 1. All requirements of section 363(b) and (f) of the Bankruptcy Code and
19 any other applicable law relating to the sale of Portfolio Property have been
20 satisfied.
21

22 2. This Court has jurisdiction over the Twenty-First Motion under 28
23 U.S.C. §§ 157 and 1334, and this matter is a core proceeding under 28 U.S.C. §
24 157(b)(2)(A). Venue of these cases and the Twenty-First Motion in this District is
25 proper under 28 U.S.C. § 1408.

1 3. The statutory predicates for the relief sought in the Twenty-First
2 Motion are sections 105(a) and 363 of the Bankruptcy Code and Bankruptcy
3 Rules 2002 and 6004.
4

5 4. As evidenced by the Certificates of Service filed with this Court:
6 (i) due, proper, timely, adequate, and sufficient notice of the Twenty-First Motion
7 and all transactions contemplated thereby (including, without limitation, the
8 assumption and assignment of certain executory contracts), has been provided in
9 accordance with Bankruptcy Code sections 102(1), 105(a), and 363, and
10 Bankruptcy Rules 2002 and 6004, and as set forth by the Standing Order, and as
11 required by the Purchase Agreement, including the Payee, the Annuity Issuer,
12 and the Annuity Owner; (ii) such notice was good, sufficient, and appropriate
13 under the circumstances; and (iii) no other or further notice of the Twenty-First
14 Motion or the transactions contemplated thereby is or shall be required.
15
16

17 5. A reasonable opportunity to object and be heard with respect to the
18 Twenty-First Motion and the relief requested therein has been afforded to all
19 persons and entities set forth by the Standing Order, and as required by the
20 Purchase Agreement, including the Payee, the Annuity Issuer, and the Annuity
21 Owner.
22

23 6. The Debtors have entered into such a contract with Peter G. Maclay
24 (the "Payee"), with the annuity policy number FP201649, in which Payee agreed to
25 assign, and the Debtors agreed to purchase certain payments payable under a

1 structured settlement agreement. These agreements are funded through the
2 annuity owned by the Annuity Owner and Annuity Issuer described in the
3 Twenty-First Motion.
4

5 7. The Debtors seek to assign the contract with the Payee to the
6 Purchaser. The Annuity Issuer and Annuity Owner shall remit the Assigned
7 Payments in accordance with the payment stream as follows: monthly payments
8 of Two Thousand Nine Hundred Twenty-one Dollars and 89/100 (\$2,921.89)
9 beginning with the payment due on November 15, 2009 through and including
10 the payment due on October 15, 2019, increasing three percent (3.00%) each
11 August (the "Assigned Payments") to Purchaser's assignee, WMS Susquehanna
12 Fund (the "Assignee"), or its successors and/or assigns, at the following address:
13 c/o Commonwealth Trust Company, 29 Hill Road, Wilmington, Delaware 19806,
14 or such other address as the Assignee, or its successors and/or assigns, may
15 designate.
16
17

18 8. The Assigned Payments shall be made to the Assignee even in the
19 event of death of the Payee. As of the date of entry of the Twenty-First
20 Supplemental Order, the Payee shall no longer have the power or authority to
21 request changes to the Payee's address or beneficiary designation relating to the
22 Assigned Payments. The Annuity Issuer and Annuity Owner shall remit the
23 Assigned Payments to the Assignee.
24
25

1 9. By making and delivering the Assigned Payments to the Assignee as
2 set forth herein, the Annuity Issuer and Annuity Owner shall have no liability to
3 the Payee for making the payments to the Purchaser. The Purchaser shall be
4 liable to the Annuity Issuer and Annuity Owner for any liabilities, taxes, or costs
5 of any kind, including reasonable costs and attorneys' fees arising from
6 compliance by the Annuity Issuer and Annuity Owner with the Twenty-First
7 Supplemental Order and/or arising as a consequence of the Purchaser's failure to
8 comply with applicable law.
9

10
11 10. The Twenty-First Supplemental Order in no way modifies or negates
12 the ownership or control of the underlying contract by the Annuity Owner and is
13 entered without prejudice to the rights of the Annuity Owner or Annuity Issuer
14 and the lack of opposition by the Annuity Issuer and Annuity Owner to this
15 transfer, and their compliance with the Twenty-First Supplemental Order, and
16 the Court's entry of the Twenty-First Supplemental Order, shall not constitute a
17 judicial determination or evidence in this or any other matter regarding: (i) the
18 assignability of payments under a structured settlement agreement or annuity
19 contract or related contracts or whether such payments can be assigned; (ii) the
20 enforceability of provisions that restrict and/or preclude assignment of payments
21 under a structured settlement agreement or annuity contract or related contracts
22 or orders; (iii) the validity of other transactions entered into by Assignee; or
23 (iv) whether the Annuity Issuer and the Annuity Owner have waived any rights in
24
25

1 connection with any other litigation or claims or rights other than the rights to
2 the Assigned Payments as described above.

3 11. The Twenty-First Supplemental Order is binding on any and all
4 successors of (a) the Payee, (b) other interested parties, (c) the Purchaser, and
5 (d) the Assignee.
6

7 12. The Court hereby retains jurisdiction to interpret and enforce the
8 provisions of the Twenty-First Supplemental Order in all respects, including,
9 without limitation, retaining exclusive jurisdiction to determine or resolve any
10 and all objections to or disputes among the parties with respect to the matters set
11 forth herein, provided however that, in the event the Court abstains from
12 exercising, or declines to exercise, jurisdiction with respect to any matter referred
13 to in this paragraph or is without jurisdiction, such abstention, refusal, or lack of
14 jurisdiction shall have no effect upon and shall not control, prohibit, or limit the
15 exercise of jurisdiction of any other court having competent jurisdiction with
16 respect to any such matter.
17
18

19 13. Notwithstanding the provisions of Bankruptcy Rules 6004(g) and
20 6006(d), the Twenty-First Supplemental Order shall not be stayed for ten (10)
21 days after entry thereof, but shall be effective and enforceable immediately upon
22 issuance thereof. Time is of the essence in closing the transactions referenced
23 herein and the Debtors and the Purchaser intend to close such transactions as
24 soon as practicable. Therefore, any party objecting to entry of the Twenty-First
25

Supplemental Order must exercise due diligence in filing an appeal and pursuing a stay, or risk its appeal being foreclosed as moot.

14. The Twenty-First Supplemental Order shall be entered in the form attached to the Twenty-First Motion as Exhibit "C."

Presented by:

DAVIDSON ❖ MEDEIROS

/s/ Barry W. Davidson


Barry W. Davidson, WSBA No. 07908
Attorney for Metropolitan Mortgage
& Securities Co., Inc. and the
Metropolitan Creditors' Trust

ELSAESSER, JARZABEK,
ANDERSON, MARKS, ELLIOTT
& McHUGH, CHARTERED

/s/ Ford Elsaesser

Ford Elsaesser, ISBA No. 02205
Attorney for Summit Securities, Inc.
and the Summit Creditors' Trust




Patricia C. Williams
Bankruptcy Judge

03/05/2007 11:31:56 AM